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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,795	08/14/2001	Arnon Shani	U013484-1	3790

140 7590 03/26/2003

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26 WEST 61ST STREET
NEW YORK, NY 10023

EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/26/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/856,795

Applicant(s)

SHANI ET AL.

Examiner

Shaojia A. Jiang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 53-63, 70-73, 75-82, 89-104 and 107.

Claim(s) withdrawn from consideration: 64-69, 74 and 83-88.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Advisory Action

This Office Action is a response to Applicant's amendment and response after FINAL filed on March 7, 2003.

2. Applicant's proposed amended claims are not deemed to place the application in better form for appeals by materially reducing or simplifying the issues for appeal.

5. Applicant's remarks filed March 7, 2003 with respect to the rejection of claims 53-63, 70-73, 75-82, 89-104 and 107 made under 35 U.S.C. 103(a) as being unpatentable over Connick (4,401,456) and Nitto Electric Ind Co. (Abstract, JP58121212) in view of Meinke et al. (Journal of Economic Entomology, 1989, Vol 82, 1830-1835) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated December 3, 2002.

Applicants' arguments that Connick teaches away from the claimed recitation relating to the atmospheric release characteristics of the claimed water insoluble beads have been fully considered but are not found convincing. As discussed in the Final Office Action, Connick discloses water insoluble beads in a sustained release polymer matrix comprising droplets of an oil in water emulsion in a polymeric matrix (see col.2 lines 45-58 and Examples therein), surface active agents, aliginat (the particular polysaccharide), bioactive material (one volatile hydrophobic component herein), and water; and the process for preparing such a sustained release, polymer, and water insoluble beads therein. Connick also discloses the size of beads therein is 0.1-5 mm,

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0.8-2 mm, or 0.1-6 mm; and the gellant is a calcium solution; a bioactive material may be herbicide or insecticide. Thus, the instant claimed bead is seen to be obvious in view of the disclosure of Connick in combination with Nitto Electric Ind Co. and Meinke et al.

Therefore, the recitation relating to the atmospheric release characteristics of the claimed water insoluble beads is not considered a limitation to the claimed water insoluble bead since it is well settled that "intended use" of a composition or product, e.g., applying in atmospheric air, will not further limit claims drawn to a composition or product. See, e.g., *Ex parte Masham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161, as discussed in the previous Office Action.

As discussed in the Final Rejection, the claimed invention is clearly obvious in view of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

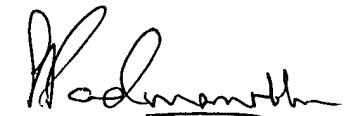
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

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Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
March 19, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

3/24/03